



California Fair Political Practices Commission

October 11, 1985

Jerri Smock, MFCC
Director of Governmental Affairs
National Traffic Safety Institute
275 North Fourth Street
San Jose, CA 95112

Re: Your Request for Advice
Our File No. A-85-207

Dear Ms. Smock:

This is in response to your request for written advice regarding whether it would be legally appropriate for you to serve on the Advisory Board on Alcohol Related Problems should that position be offered to you.

The Political Reform Act of 1974^{1/} does not prohibit a person from holding a public office even where a conflict of interest or potential conflict of interest exists. However, Section 87100 does prohibit a public official from making, participating in making or in any way attempting to use his or her official position to influence a governmental decision in which he or she knows or has reason to know that he or she has a financial interest.

A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

. . .

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

. . .

Section 87103

As Director of Governmental Affairs for National Traffic Safety Institute (NTSI), you hold a position of management in NTSI and it is likely that NTSI is a source of income of more than \$250 per year to you. Therefore, you have a financial interest in NTSI and, accordingly, you would have to disqualify yourself from any decision which would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on NTSI.

An effect is reasonably foreseeable only if there is a substantial likelihood that the effect will occur, as opposed to a mere possibility of its occurrence.

The effect of a decision will be considered material if it is significant. Commission regulations 2 Cal. Adm. Code Section 18702, et seq., outline specific monetary guidelines

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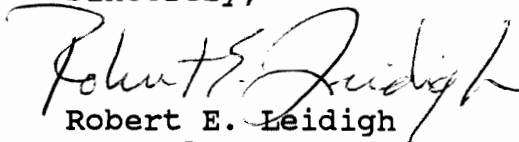
for determining whether the effect of a decision on a financial interest will be significant. I have enclosed a copy of these regulations; however, please be advised that the Commission is in the process of reviewing and revising its conflict of interest guidelines. Consequently, the current guidelines may not apply at a future date.

Finally, if a public official determines that a particular governmental decision could have a reasonably foreseeable material financial effect on his or her financial interests, it must be determined whether that effect is distinguishable from the effect on the public generally. A material financial effect of a governmental decision on an official's interest is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. Regulation 2 Cal. Adm. Code Section 18703.

Should you be appointed to serve on the Advisory Board on Alcohol Related Problems and you face a situation which may potentially involve a conflict of interest,^{2/} the Commission is authorized to give you formal written advice or informal assistance regarding your particular situation. I have enclosed 2 Cal. Adm. Code Section 18329 which explains the procedure for obtaining advice.

I hope that this general description of the Political Reform Act is helpful to you. If we can be of further assistance to you, please let us know.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:JG:plh
Enclosures

^{2/} You should be advised that there are other conflict of interest laws, such as Section 1090, et seq., which may be applicable to your situation. Unfortunately we are not authorized to give advice regarding these other laws. You may wish to consult with your own counsel or, if an appointment is offered, you may wish to consult with the Attorney General's Office.



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N A T I O N A L T R A F F I C S A F E T Y I N S T I T U T E

October 1, 1985

Mr. John Keplinger
Executive Director
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Dear John:

As we discussed several weeks ago, would it be legally appropriate for me to serve on a non-paying state board or commission while being employed as Director of Governmental Affairs for NTSI. NTSI (National Traffic Safety Institute and National Training Systems Institute) is a private company that works closely with the courts, district attorney offices, and other county agencies in the establishment of diversion programs. These programs include traffic safety, petty theft, domestic violence, and alcohol and drug abuse for first time offenders.

The commission in question is the Advisory Board on Alcohol Related Problems. Although I have not been approached to formally serve on this commission, I would like to make sure there is no conflict if the opportunity presented itself.

Very truly yours,

JERRI SMOCK, MFCC
Director of Governmental Affairs

JS/dc